

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1369

B

PPS

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.s.

HUI SING SZE,

Defendant-Appellant.

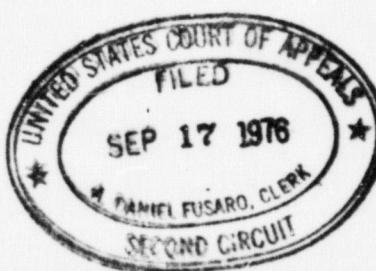
*On Appeal from the United States District Court for the
Southern District of New York.*

APPELLANT'S APPENDIX

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JUDGE WARD

DOCKET ENTRIES

1a
74 CRIM. 122

ATTORNEYS

TITLE OF CASE

THE UNITED STATES

1. LEE LOUIE 1, 3-4
2. TOMMY CHIN 1-4
3. EDWARD CHOW 1-4
4. HUI SING SZE 1, 3-4
5. KENNETH LIU 1-2

For J. S.:

Edward J. Kuriansky, AUSA,
791-0036

For Defendant:

ABSTRACT OF COSTS (08) \$53,423.1	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
18:201 Bribery (1, 3-4)					
18:371 Consp. to do (1, 3-1)					
(Four Counts)					

DATE	PROCEEDINGS
12-31-74	Filed indictment. B/W ordered for deft, Kenneth Liu. Griesa, J.
1-6-75	TOMMY CHIN: Deft. present (Atty present). Deft. enters a plea of NOT GUILTY. Case assigned to Bryant, J. 10 days for Motions. Bail pre-fixed by Magistrate at \$3500. P.R.B. cont'd. E/P --GRIESA, J.
1-6-75	EDWARD CHOW: Deft. present (Atty present). Deft. enters a plea of NOT GUILTY. Bail pre-fixed by Magistrate at \$3500. P.R.B. cont'd. E/P --GRIESA, J.
1-6-75	LEE LOUIE: Deft. present (Atty Marerice Kozuin present). Deft. enters a plea of NOT GUILTY. Bail pre-fixed by Magistrate at \$15000. P.R.B. cont'd. E/P --GRIESA, J.

(Cont'd. of Page #2)

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DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1-6-75	HUI SING SZE- Deft. present (Atty Steven Markana present). Deft. enters a plea of NOT GUILTY. Bail pre-fixed by Magistrate at \$5000. P.R.B. cont'd. E/P --GRIESA,J.		
1-6-75	KENNETH LIU- Deft. not present (No Atty). Court enters a plea of NOT GUILTY. B/W issued. --GRIESA,J.		
1-6-75	Filed Gov't Notice of Readiness for Trial on or after 1-6-75.		
1-6-75	KENNETH LIU. Bench Warrant issued.		
1-8-75	HUI SING SZE- Filed Notice of Appearance of Steven S. Mukamal, 127 John Street, NYC 10038 Tel#952-0700		
1-8-75	EDWARD CHOW Filed Notice of Appearance of Harvey L. Strelzin, 213 Broadway, NYC 10013 Tel# 233-0763.		
1-14-75	FILED the following papers rec'd from Magistrate Raby (Mag#74-914): LEE LOUIE- Docket Entry Sheet - Criminal Complaint - Disposition Sheet - Appointment of Counsel, Gilbert S. Rosenthal, 401 Bway, NYC Tel#212-224-1771- Temporary Commitment - Appearance Bond in the amount of \$15,000.00 dtd 1-22-74		
	TOMMY CHIN- Docket Entry Sheet - Criminal Complaint - Disposition Sheet - Temporary Commitment- Appearance Bond in the amount of \$15,000.00 dtd 1-22-74.		
	EDWARD CHOW- Docket Entry Sheet - Criminal Complaint - Disposition Sheet - Appointment of Counsel, Harvey Gainsburg, 235 Canal Street, H.Y.C. Tel# 266-6710- Temporary Commitment- Appearance Bond in the amount of \$3,500.00 dtd 1-22-74.		
	HUI SING SZE- Docket Entry Sheet - Criminal Complaint - Disposition Sheet - Warrant of Arrest dtd 1-19-74 - Appointment of Counsel, Alan J. Stupak, 127 John Street, NYC 10038, Tel#212-952-0700- Appearance Bond in the amount of \$5,000.00 dtd 1-23-74.		
1-21-75	HUI SING SZE- Deft. (Atty Stephen Singer) present, Ellen Chu, interpreter, present, pleads GUILTY to COUNT 1 only. P.S.I. ordered. Sent. adj'd to 5-2-75. Bail cont'd. ---BRIEANT,J.		

(Cont'd on Page #3)

JUDGE WARD

C. 110 Rev. Civil Docket Continuation

Date Code
Judgment

DATE	PROCEEDINGS
7-4-75	TOMMY CHIN & EDWARD CHOW- Deft's (Atty H. Strzelzak) present. Both Deft's withdrew previous plea of NOT GUILTY to Count 1, and plead GUILTY to Count 1. P.S.I. Ordered. Sent. adj'd to May 23, 1975. Bail cont'd --BRIEANT,J.
7-9-75	EDWARD CHOW & TOMMY CHIN- Filed Notice of appearance of Atty. Harvey L. Strzelzak, 253 Bayway, NYC 10007 Tel#212-233-0763.
7-2-75	HUI SING SEE- Filed Judgment & Probation/Commitment Order - The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS on COUNT 1 pursuant to section 3651 of Title 18, U.S. Code, as amended, with provisiosn Deft be confined in a jail type institution for a period of THREE (3) MONTHS as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and the Deft is placed on Probation for a period of FOUR (4) YEARS and NINE (9) MONTHS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Special condition of Probation being that the Deft is to obey all lawfull orders of the Immigration & Naturalization Services pertaining to this case. COUNTS 3 and 4 are DISMISSED on motion of Deft's counsel with consent of the Government. Deft Remanded--BRIEANT,J.
7-3-75	TOMMY CHIN- Filed Judgment and Probation Order- Imposition of sentence on COUNT 1 is suspended. Deft. is placed on Probation for a period of FIVE (5) YEARS, subject to the standing probation order of this Court. COUNTS 2,3, and 4 are DISMISSED on motion of Deft's Counsel with consent of the Government.---BRIEANT,J.
7-3-75	EDWARD CHOW- Filed Judgment And Probation/Commitment Order - The Deft. is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS on COUNT #1 pursuant to Section 3651 of Title 18, U.S. Code, as amended, with provisiosn Deft. be confined in a jail type institution for a period of THREE (3) MONTHS as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and the Deft. is placed on Probation for a period of FOUR (4) YEARS and NINE (9) MONTHS, to commence upon expiration of confinement, subject to the standing Probation order of this Court. Special condition of Probation being that the Deft. obey all lawful orders of the Immigration Service. Deft. is continued on present bail until July 1, 1975 at which time he is to surrender in Room 506 for service of sentence. COUNTS 2,3, and 4 are DISMISSED on motion of Deft's Counsel with the consent of the Government.---BRIEANT,J.
7-16-75	HUI SING SEE- Filed commitment & entered return. Deft delivered to Warden, Federal Detention HQRTS, N.Y.C.
7-27-75	EDWARD CHOW - Filed Deft's affidavit & notice of motion for modification of sentence. Ret. 7-1-75, at 10:00 A.M.
7-1-75	EDWARD CHOW - Bench Warrant issued.
7-10-75	EDWARD CHOW - Filed oral motion by Mr. Iason. Please vacate B/W tomorrow, ordered 7-1-75 by CARTER,J. BRIEANT,J. stayed surrender until 8-1-75.
7-11-75	EDWARD CHOW- Filed Pltffs Affid vit in opposition to defts Motion dated 7-26-75 for a reduction of sentence pursuant to Rule 35 F.R.C.P.
7-10-75	LIN DOUTE- Deft. W/A/P withdraws plea of not guilty & pleads guilty to ct. 3 P.S.I. ordered. Sentence date 8-7-75 at 9:30 A.M. bail cont'd. Ward, J.

-OVER-

DATE	PROCEEDINGS	DATE ORD. JUDGMENT
7-30-75	EDWARD CHOW-Filled MEMO ENDORSED on deft's motion for modification of sentence. Filed 6-27-75. The within motion is denied. Surrender date is enlarged to August 11, 1975 at 10:30 A.M. in Room 506.....Briant,J. (mailed notice)	
7-18-75	Filed transcript of record of proceedings dated 7-18-75.	
8-13-75	EDWARD CHOW-Filled commitment & entered return. Deft. delivered on 8-11-75 to Warden, Federal Detention Headquarters, N.Y.C.	
10-22-75	LEE LOUIE-Filled JUDGMENT & ORDER OF PROBATION (atty present) IMPOSITION OF PRISON SENTENCE is suspended on count 3 and deft. is placed on probation for a period of FIVE (5) YEARS. The period of probation to run concurrently with the three (3) year Special Parole term imposed on Indictment 75 Cr. 172 and 75 Cr. 229. Bail revoked. Counts 1 and 4 dismissed on motion of deft's. counsel with the consent of the Govt.....Ward,J. Issued copies 10-28-75.	
11-06-75	LEE LOUIE-Filled commitment & entered return. Deft. delivered to Warden, F.C.C., N.Y.C. on 10-22-75.	
11-07-75	KENNETH LIU- <i>X</i> RECEIVED FEDERAL BUREAU OF INVESTIGATION U.S. DEPARTMENT OF JUSTICE 1975 TO A.M. 11/11/75	
12-75	LEE LOUIE- Filed Deft's affidavit Notice of Motion for an order pursuant to Rule 35 of the Criminal Procedure Law for reduction of sentence. (Int. on 75 CR 172, 229, 685.)	
12-75	LEE LOUIE- Filed Deft's affidavit Notice of Motion for reduction of sentence. (Int. on 75 CR 172, 229, 685.)	
12-75	LEE LOUIE- Filed Deft's affidavit Notice of Motion for reduction of sentence. (Int. on 75 CR 172, 229, 685.)	
12-75	LEE LOUIE- Filed Deft's affidavit Notice of Motion for reduction of sentence. (Int. on 75 CR 172, 229, 685.)	
12-75	HUI SING SZE - FILED GOVT'S MEMORANDUM OF LAW IN OPPOSITION TO WITHDRAWAL OF PLEA & VACATION OF JUDGMENT	
12-75	LEE LOUIE - Filed transcript of record of proceedings dated 10-22-75 (Copy in 75-172, 75-685)	
12-75	HUI SING SZE- Filed Memorandum & order #44736 The motion to vacate the plea is in all respects denied So much thereof as seeks a stay of deportation is denied without prejudice to an application for such relief in a plenary proceeding brought to review any determinations which the Immigration & Naturalization Service may have made Breen,J. 12-14	
12-75	HUI SING SZE- Filed Deft's Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the Memorandum & Order #44736 entered on July 12, 1975. (Copy to the USAtty & mailed copy to Deft).	
12-75	Filed transcript of record of proceedings dated 5-2-75	BEST COPY AVAILABLE

R 1225

Page 15

5a

74 CR 1225 (BJW)

110 Rev. Civil Docket Continuation

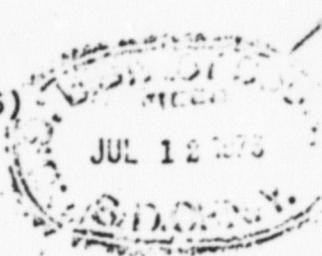
ATN	PROCEEDINGS	Date Order of Judgment No.
18-76	HUI SING SZB - Filed Notice that the record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit on 8-18-76.	
19-76	HUI SING SZB- Filed Notice that the Supplemental record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit on 8-19-76.	

{ A true copy.

A. Daniel Fussar
clerk
by Vincent A. Carlucci
Chief Deputy Clerk

6a

MEMORANDUM & ORDER (Filed July 12, 1976)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

UNITED STATES OF AMERICA,

72 Cr. 1225-CLB

-v-

HUI SING SZE,

MEMORANDUM AND ORDER

44736

Defendant.

-X

Brieant, J.

By notice of motion filed May 26, 1976, defendant Sze seeks an order pursuant to Rule 32(d), F.R.Crim.P., vacating his conviction and sentence herein on the crime of conspiracy, and granting leave to withdraw his plea of guilty, and to reinstate his prior plea of not guilty. Since sentence has been imposed, Rule 32(d) requires a showing of "manifest injustice" in order to obtain such relief.

Petitioner apparently also seeks a stay of deportation in this proceeding.

Movant asserts three grounds: (1) that Sze, a native of China, was deprived of the effective aid and assistance of counsel at his arraignment, plea and sentencing, because of a claimed

language difficulty; (2) that he did not know the extent of the possible sentence; and (3) that the proceedings are defective because the Court minutes do not contain the Chinese translation of proceedings.

The latter contention is so absurd that we will not waste any time with it. When the day comes in which we have to maintain multi-lingual court minutes, it will be impossible to punish wrongdoers, unless they be native born.

The Court remembers Mr. Sze's case independently of what is set forth in the minutes of our proceedings of March 21, 1975, when the plea was taken, and also on May 2, 1975, when sentence was imposed. There is sufficient information in the minutes, however, to demonstrate that this application is frivolous, and that no evidentiary hearing is necessary.

By indictment filed December 31, 1974, Mr. Sze, and Lee Louie, Tommy Chin, Edward Chow and Kenneth Liu were charged with four counts, including conspiracy to defraud the United States by bribing Inspectors of the Immigration & Naturalization Service, to provide Alien Registration Receipt Cards ("Green Cards") to those not entitled; together with two substantive counts of bribery.

Movant was not named in Count Two. An initial pre-trial conference was held in the matter on February 20, 1975, at which time Sze, present and represented by counsel, and others, who had previously been arraigned in Part I and pleaded not guilty, were apprised of the Court's intention to expedite trial of the indictment. Because the attorney for Chin and Chow did not appear, that conference and pre-trial hearing was continued until March 11, 1975. At that time Mr. Sze appeared by his attorney, Allen Stopek, Esq.; co-defendant Lee Louis announced that he was ready for trial, and certain minor discovery requests were deferred pending an office conference among counsel.

On March 12, 1975, defendant appeared again for a further pre-trial conference, with Mr. Stephen Singer as his attorney, of counsel to Allen Stopek, Esq. Most of these pre-trial proceedings were held in English, but on March 21, 1975, defendant's attorney having indicated an intention to plead, Ellen Chu, a respected and experienced Chinese interpreter, attended with defendant and his counsel. It was at that time that his plea of guilty was taken.

Familiarity with the minutes of that date is assumed. Defendant answered many of the questions in English directly to the

Court. Our transcript speaks for itself. Although this 29 year old native of China stated to the Court that he did not speak "too much" English, he also stated that he was a self-employed manager of a shoe repair store. In this position, one must deal with the public, the landlord, the suppliers, taxing authorities, insurers and machine servicemen. While notions of a complex nature, such as "conspiracy" and "fraud" may require the services of an interpreter, it was clear to the Court that the defendant spoke fairly fluent English.

Defendant's reputable attorney represented to the Court that his interpreter had read the indictment to defendant in the Chinese language in counsel's office, and defendant intentionally waived a reading of it at the taking of the plea.

"MR. SINGER: Your Honor, this was read to him in the Chinese language in our office by our interpreter.

THE COURT: When was that done?

MR. SINGER: Several days ago.

Q. Do you want it read again?

A. No.

Q. You understand I am willing to have the interpreter read it to you again at this time if you want?

10a

A. It's not necessary."

Defendant showed that he had finished a year of college in China. His answers to many of the questions were given in English, and show clear comprehension of the charges. For example, at page 4, line 20:

"Q. Has your attorney explained to you what the charge is against you in count one?

A. Yes.

Q. And it's been translated to you to your satisfaction, has it?

A. Yes, in both English and Chinese.

Q. Do you fully understand it?

A. Yes."

Defendant responded clearly to all of the Court's questions, as the record shows. Again at page 10, the attorney represented to the Court that he had had the benefit of an interpreter, and had engaged in full discussion with the defendant.

It is established that the Court can rely on representations of the Government, such as are found at page 12 of the Minutes of March 21, 1975, and on balance the evidence of wrongdoing was more than sufficient. Iriary v. United States, 508 F.2d 960, 963, fn. 1

(2d Cir, 1974). An adequate showing was made to permit the Court to accept the plea, which was voluntary, and free of any coercion.

Furthermore, on May 2, 1975, the date of sentencing, defendant appeared with a different interpreter, Mr. Szeto, present. At this time, he did not complain about either interpreter, nor did he seek relief from his plea. At page 6 of the sentencing minutes of May 2, 1975, defendant spoke with sufficient comprehension to suggest that he was familiar with his rights in the matter, and knew what he was charged with having done, and what the potential sentence was. That defendant would be deported when and if the Immigration & Naturalization Service got around to doing it, was also made clear to defendant prior to sentence, as these minutes show. At no time did he disclaim his guilt, nor did he ever deny the voluntariness of his plea.

The Court imposed a lenient sentence, expecting that deportation was likely, and considering both the Draconian nature of this likely result and the inutility of imprisoning one who will be deported on his release from prison.

It is clear that movant was not denied his right to effective assistance of counsel. See United States v. Yanishefsky.

12a

500 F.2d 1322 (2d Cir. 1974) and cases therein cited, which require a relatively high standard, not met on this record, for a criminal defendant to disclaim responsibility because of claimed ineffective assistance of counsel.

Rule 11, F.R.Crim.P. was fully complied with. See Michel v. United States, 507 F.2d 461 (2d Cir. 1974). There is no need for an evidentiary hearing, since movant has not come forward with any evidentiary facts to suggest sufficient grounds for disturbing his judgment of conviction.

The motion to vacate the plea is in all respects denied. So much thereof as seeks a stay of deportation is denied without prejudice to an application for such relief in a plenary proceeding brought to review any determinations which the Immigration & Naturalization Service may have made.

So Ordered.

Dated: New York, New York
July 9, 1976

CHARLES L. BRIEANT
CHARLES L. BRIEANT
U. S. D. J.

TRANSCRIPT OF HEARING DATED MARCH 21, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against- : 74 Cr. 1225

HUI SING SZE,

Defendant.

11. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 11)

11. *What is the best way to increase the number of people who use a particular service?*

10 BEFORE: HON. CHARLES L. BRIEANT, JR., D. J.

14 APPEARANCES:

15 PAUL J. CURRAN, ESQ.,
16 United States Attorney for the
Southern District of New York
17 BY: EDWARD J. KURIANSKY, ESQ.,
Assistant United States Attorney.

18 ALLEN STOPECK, ESO.,
19 Attorney for Defendant,
BY: STEPHEN SINGER, ESO.,

of Counsel.

20 ALSO PRESENT:

21 Ellen Chu, Interpreter.

1 gwcq

2 (Case called.)

3 MR. KURIANSKY: Good morning, your Honor.

4 MR. SINGER: Good morning, your Honor.

5 THE COURT: Will you swear the interpreter, please.

6 (Ellen Chu, the Interpreter, was duly sworn.)

7 THE COURT: What is the status of this matter at
8 this time?9 MR. KURIANSKY: Your Honor, we are on for pleading
10 today as to this defendant.

11 THE COURT: To which count?

12 MR. KURIANSKY: To the conspiracy count, count
13 1 of the indictment, 74 Cr. 1225.

14 THE COURT: Mr. Stopeck --

15 MR. SINGER: I'm Mr. Singer, Mr. Stopeck's partner.

16 THE COURT: I'm sorry, Mr. Singer. I don't
17 have your name listed.18 Would you come forward with your client to be
19 closer to the reporter, and the interpreter also please
20 step forward.

21 BY THE COURT:

22 Q What is your name?

23 A (Through the interpreter) Hui Sing Sze.

24 Q Are you also known as Allen?

25 A Yes.

1 qwcg

3

2 Q Do you read, write, speak or understand any
3 English?

4 A Not too much.

5 THE COURT: Miss Chu, have you read count 1 of
6 the indictment and translated it to him this morning while
7 you were waiting here?

8 MR. SINGER: Your Honor, this was read to him in
9 the Chinese language in our office by our interpreter.

10 THE COURT: When was that done?

11 MR. SINGER: Several days ago.

12 Q Do you want it read again?

13 A No.

14 Q You understand I am willing to have the inter-
15 preter read it to you again at this time if you want?

16 A It's not necessary.

17 Q All right.

18 What is your occupation?

19 A I am a manager, self-employment, shoe repair.
20 I am a manager of shoe repair store.

21 Q How old are you?

22 A 29.

23 Q Did you go to school anywhere?

24 A Hong Kong, China.

25 Q What grade did you go?

2 THE INTERPRETER: He is a year college in China,
3 Chinon University.

4 THE COURT: Would you translate, please, literally
5 whatever he tells you. Don't say he went. Give me a little
6 translation of whatever words you get insofar as you are able
7 to.

8 THE INTERPRETER: All right.

9 Q Are you currently or have you recently been under
10 the care of a physician or a psychiatrist?

11 A No.

12 Q Have you been hospitalized or treated originally
13 for alcoholism or narcotics addiction?

14 A No.

15 Q Are you feeling all right physically today?

16 A Okay.

17 Q Have you gone over the indictment with your
18 attorney?

19 A Yes.

20 Q Has your attorney explained to you what the charge
21 is against you in count one?

22 A Yes.

23 Q And it's been translated to you to your satisfaction,
24 has it?

25 A Yes, in both English and Chinese.

2 Q Do you fully understand it?

3 A Yes.

4 Q Have you told your attorneys everything you know
5 about this matter?

6 A Yes.

7 Q Have you held anything back from your attorneys?

8 A All I remember I told my attorney.

9 Q Are you satisfied with your attorney's repre-
10 sentation of you?

11 A Yes.

12 Q Is he privately retained?

13 A Yes.

14 Q Do you understand that if you did not plead
15 guilty, you would have a right to a speedy and public trial
16 by a jury of 12 people and that upon such a trial you would
17 be presumed innocent unless and until the government established
18 your guilt of the charge beyond a reasonable doubt to the
19 satisfaction of all 12 jurors?

20 THE COURT: Does he understand that?

21 THE INTERPRETER: Yes, he does. Yes, he under-
22 stands your question.

23 THE COURT: What else did he say, Miss?

24 THE INTERPRETER: He wants to plead guilty.

25 Q Do you understand that upon such a trial you

1 gwcg

6

2 would have the right to confront and to cross-examine all
3 witnesses that were called by the government against you?

4 A Yes.

5 Q Do you understand that upon such a trial you
6 could remain silent and no inference could be drawn against
7 you by reason of your silence or, if you wanted to, you could
8 take the stand and testify in your own defense?

9 A Yes.

10 Q Do you understand that if you wanted to, you
11 could have a trial by a judge without a jury, in which event
12 the same things would be true, the burden of proof would be
13 on the government and you would have the same constitutional
14 rights?

15 A Yes.

16 Q Do you understand that you would have the right
17 at a trial to compel the attendance of witness and the
18 production of evidence for your own defense?

19 A Yes.

20 Q Do you understand that if your offer to plead
21 guilty is accepted, then you would give up those rights with
22 respect to this charge against you and the court would have
23 the same power to impose sentence as it would have if a
24 jury brought in a verdict of guilty against you after a
25 trial?

2 A Yes.

3 Q You said you were 29 years old; is that right?

4 A Yes.

5 Q Do you understand that the maximum penalty on
6 your plea of guilty to this charge is such that the court
7 has the power to impose upon you a fine of not more than
8 \$20,000 or imprisonment for not more than 15 years or both?

9 MR. KURIANSKY: Your Honor, I think that's the
10 bribery count. The conspiracy count would just be five years
11 and/or \$10,000.

12 THE COURT: I beg your pardon. All right. They
13 are listed in reverse on my sheet here.

14 I will start that over again.

15 Q Do you understand what the maximum sentence is
16 in connection with this charge? The court would have the
17 power upon your plea of guilty to impose upon you a fine of
18 not more than \$10,000 and a possible imprisonment of not more
19 than five years or both? Do you understand that?

20 A Yes.

21 Q Have you been induced to offer to plead guilty
22 by reason of any promises, statements or predictions by any-
23 one to the effect that you would get leniency or special
24 treatment or consideration if you pleaded guilty instead of
25 going to trial?

2 A Yes.

3 Q Have you been induced to plead guilty by reason
4 of any fear, pressure or force or the like?

5 A No.

6 Q I asked you a moment ago, had you been induced
7 to offer to plead guilty by reason of any promises. I don't
8 think I heard your answer.9 Are you pleading guilty because you believe you
10 are guilty or because of some promise or statement or pre-
11 diction made to you by somebody?

12 THE INTERPRETER: He says no.

13 THE COURT: I thought he might have said yes.
14 It wasn't clear to me what he said.15 MR. KURIANSKY: I thought I heard yes, too.
16 He may have been answering whether or not he understood what
17 you had said. I'm not sure.18 Q Have you been induced to offer to plead guilty
19 by reason of any promises, statements or predictions by any-
20 one to the effect you would get leniency or special treat-
21 ment or special consideration if you plead guilty instead
22 of going to trial?

23 THE INTERPRETER: The lawyer explained it to him.

24 Q Are you pleading guilty because you believe you
25 are guilty or are you pleading guilty because somebody made

1 gwcg

2 a promise or statement or prediction to you that you would
3 get leniency or special treatment or consideration if you
4 pleaded guilty instead of going to trial? Which is it?

5 A No. I feel this way myself.

6 Q Are you pleading guilty solely because you believe
7 you are guilty?

8 A Yes.

9 Q Are you now under the influence of any substance
10 such as alcohol, drugs or the like that might affect your
11 ability to understand what you are doing now?

12 A No.

13 THE COURT: Mr. Kuriansky, does the government
14 represent it has sufficient evidence to make a prima facie
15 case on count 1?

16 MR. KURIANSKY: Yes, it does, your Honor.

17 THE COURT: All right.

18 Mr. Singer, do you know of any reason why your
19 client should not be permitted to plead guilty or do you know
20 of any defense which would be available to him if you went
21 to trial?

22 MR. SINGER: No, your Honor.

23 THE COURT: All right.

24 You believe you have discussed it adequately with
25 him so he understands you?

2
MR. SINGER: Yes, your Honor.

3
THE COURT: You have had the benefit of a interpreter?

4
5
MR. SINGER: Yes, your Honor.

6
Q Is there anything you want to ask the Court about
7 the charge against you or about your rights or about the
8 possible consequences of pleading guilty?

9
A No.

10
Q Do you still wish to plead guilty?

11
A Yes.

12
Q Tell me what you did with respect to count 1.

13
A Could you repeat, your Honor?

14
Q What activity did you do? What did you actually
15 do in connection with count 1?

16
THE INTERPRETER: A friend told him that they
17 can buy green card, permanent resident card.

18
Q What did you do after your friend told you that?

19
THE INTERPRETER: So he asked Allen to introduce
20 to get people to buy the card, and in the meantime he wants
21 to get one himself because he doesn't have one himself.

22
Q Did you agree with some other person that you
23 would pay money to Granelli and Kibble at \$4,000 per card
24 for green cards in behalf of other persons?

25
THE INTERPRETER: He didn't say so.

2 Q Who did you agree with to offer money for green
3 cards for other persons?

4 A Eddie Chow.

5 Q What was the nature of your agreement with Eddie
6 Chow?

7 THE INTERPRETER: He doesn't really know this
8 Eddie Chow very well, but whenever he has a friend, he
9 introduced -- he just recommended him to Eddie Chow.

10 Q Did you have a transaction of some sort with
11 Eddie Chow?

12 A Just a regular friend.

13 Q Did you have any business dealing with him?

14 A No.

15 Q No?

16 MR. KURIANSKY: Your Honor, I think overt acts
17 8 and 9 deal with this defendant. It might be a little
18 clearer for him --

19 Q Did you go to the Jade Chalet Bar at 199 Worth
20 Street on May 20th of last year?

21 A Yes.

22 Q What was your purpose in going there?

23 A The purpose is to -- I explain it to the immigra-
24 tion officers. If he could buy the green card because his
25 situation is a little different.

1 qwcq

12

2 THE COURT: What is it the government proposes
3 to show here?

4 MR. KURIANSKY: The government's proof would
5 establish, your Honor, that on May 20, 1974 Tommy Chin and
6 Edward Chow introduced Allen to two immigration officers,
7 Granelli and Kibble, for the purpose of offering money to
8 these investigators to obtain a green card first for Allen
9 and then subsequently for another illegal alien by the name of
10 Pang Sing Ping, who is named as a co-conspirator in the
11 indictment.

12 There was a subsequent meeting on May 23, 1974
13 among these same individuals in which Allen made the same
14 offer to these immigration officers to buy a green card.

15 The government would prove that on July 18
16 Pang Sing Ping did, in fact, give money to the intermediaries,
17 Tommy Chin and Edward Chow, for delivery to the immigration
18 officers. The money was, in fact, given to the immigration
19 officers.

20 Q Is that true?

21 THE INTERPRETER: He was there at the bar.
22 The purpose is to buy a green card for himself. I think he
23 answered the same thing before. The other two wanted to
24 buy the card also.

25 Q Did you have an agreement with somebody to

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SOUTHERN DISTRICT OF NEW YORK

1 gwcg

13

2 engage in the purpose of green cards and their resale to
3 somebody else?

4 A No.

5 Q What was your arrangement with the other defen-
6 dants, if any?

7 A No, nothing, none.

8 MR. SINGER: Can I have a short recess, your
9 Honor?10 The way my client described this to me was that
11 he had an agreement to buy it for himself.12 THE COURT: But the indictment charges him with
13 also having an agreement to buy it for resale to others.14 I think they have his own card in the substantive
15 count, don't they? You see, the District Court is now
16 caught in a vise between the Irizarry case and the Nevada
17 case, and the implication in the dissent in the Nevada case
18 is somewhat far reaching.19 MR. SINGER: As far as the conspiracy, he indicated
20 to me he did conspire with --

21 BY THE COURT:

22 Q Do you know what a conspiracy is, Mr. Sze?

23 A Yes.

24 Q What is it? Do you understand that it's an
25 agreement by two or more persons to act in concert to violate

1 gwccg

2 law?

3 THE COURT: Please translate that for him, Miss
4 Chu.

5 THE INTERPRETER: He didn't know it was against
6 the law. He just talked about it. They want to buy the
7 card.

8 Q Did you have an agreement with one other person
9 to obtain cards for third parties for money?

10 THE INTERPRETER: He never thought that way.
11 He wants to get one for himself.

12 MR. SINGER: I believe he said he didn't know it
13 was illegal.

14 THE COURT: That is immaterial.

15 MR. SINGER: He said he did have an agreement
16 with these people to buy the card.

17 THE COURT: For himself?

18 MR. SINGER: Yes.

19 MR. KURIANSKY: I think what happened was,
20 although he originally approached these officers to buy one
21 for himself, he eventually arranged for a third party,
22 Pang Sing Ping, to buy a card, although he was not present
23 at the time Pang Sing Ping actually paid the money.

24 Q Did you do that, Mr. Sze?

25 THE INTERPRETER: He said that a friend wants to

2 buy it.

3 MR. KURIANSKY: Was the name of the friend Pang
4 Sing Ping?

5 THE DEFENDANT: (In English.) Yes.

6 MR. KURIANSKY: Did you introduce her to Eddie
7 Chow to buy the green card from the immigration officers?8 THE DEFENDANT: (In English.) I told her Eddie
9 Chow, Eddie Chow take care of everything.10 MR. KURIANSKY: You advised Eddie Chow to contact
11 Pang Sing Ping so she could buy a green card?

12 THE DEFENDANT: (In English.) Yes.

13 THE COURT: The record should show the defendant
14 is now answering the questions in English.

15 Q You understand pretty much English, don't you?

16 A (In English.) Some of them. About the law, I
17 don't really understand.18 Q I think your English is better than the Chinese
19 you are getting secondhand.

20 THE COURT: All right. I will accept the plea.

21 I will direct that a pre-sentence report be
22 prepared. I will give you a date for sentence.23 - May 2nd at 9:30. You are continued on your
24 existing bail.

25 Do you understand your obligation to be here at

2 that time?

3 THE DEFENDANT: (In English.) I do.

4 MR. KURIANSKY: Will it be this room, your Honor?

5 THE CLERK: It will be in the law journal. We
6 don't know the room.7 THE COURT: Ask your attorney what room or
8 arrange to meet your attorney ahead of time.9 Do you understand the penalties for failure to
10 comply with your bail?

11 THE DEFENDANT: (In English.) Yes.

12 THE COURT: Will you go with him to the probation
13 office, please, in case they can't understand him.

14 THE INTERPRETER: Yes.

15 THE COURT: All right.

16 - - -

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TRANSCRIPT OF HEARING DATED MAY 2, 1975

1 j.s.

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 vs. :

7 HUI SING SZE, a/k/a "Allen", :

8 defendant. :

9 -----x

10

11 Before:

12

13 HON. CHARLES L. BRIEANT, JR.,

14 District Judge.

15

16

17 New York, May 2, 1975.

18

19

20 APPEARANCES:

21

22 For the Government:

23

24 EDWARD KURIANSKY, Esq.,

25 Assistant United States
Attorney.

26

For the Defendant:

27

28 ALAN J. STOPEK, Esq.

29

Interpreter:

30

S. C. SZETO

31

1 jks

2

2 (Case called.)

3 THE COURT: Swear the interpreter, please.

4 (Interpreter sworn.)

5 THE COURT: Would you speak with the defendant
6 and see if he understands you properly, please, Mr.

7 Szeto?

8 THE INTERPRETER: Yes.

9 (Pause.)

10 THE INTERPRETER: Yes.

11 THE COURT: Mr. Stopek, is there any reason why
12 sentence should not be imposed at this time?

13 MR. STOPEK: No, your Honor, there is not.

14 THE COURT: Mr. Sze, is there any reason why
15 sentence should not be imposed at this time?

16 THE DEFENDANT: No.

17 THE COURT: Mr. Stopek, you may be heard in your
18 client's behalf, and you may present any information in
19 mitigation of sentence.20 MR. STOPEK: Well, your Honor, in behalf of my
21 client, Mr. Sze, I would like to state for the record that
22 he has never been in trouble with any police or governmental
23 authorities before for any criminal action. He has a
24 clean record prior to this occasion.

25 In connection with the matters that arose here,

1 jks

2 he has promised to cooperate with the Immigration &
3 Naturalization Service in any further investigation that
4 they may undertake.

5 He didn't enter into this for any monetary
6 benefit to himself. He was as much a victim of it as
7 any of the other people who were involved.

8 The defendant was married to a person who was
9 allowed to stay in the United States, although not a
10 permanent resident, and unfortunately, he was involved
11 in this to try to stay with his wife.

12 He had been in the United States previously.
13 He was with his wife and, unfortunately, had very bad
14 advice from counsel who told him to leave the country.

15 THE COURT: Why was that bad advice? He sub-
16 mitted to voluntary departure and that allowed him to be
17 an applicant, so that if his wife became a citizen, he
18 could be on a preferred Immigration basis.

19 MR. STOPEK: Due to their own circumstances, her
20 place of birth being Hong Kong and his being Chinese, the
21 preference that she was registered under in the Immigration
22 law would never be reached, not under current Immigration
23 policy.

24 THE COURT: But they can live in any English
25 possession, can't they?

1 jks

2 MR. STOPEK: They could have, but she had
3 permission to stay here, and he would have been given
4 permission to remain in the United States with her because
5 of her permission to remain here, but apparently that wasn't
6 applied for.

7 Further, his wife did ask for leave to come
8 back.

9 THE COURT: He entered illegally and he married
10 after he entered illegally, and he was caught when he was
11 returning from Canada on vacation and placed under
12 deportation proceedings which he settled by going to
13 Hong Kong voluntarily.

14 MR. STOPEK: Yes.

15 THE COURT: And I don't know why you could
16 characterize that as bad advice. He was an illegal
17 alien to begin with.

18 MR. STOPEK: Your Honor, if I may, the Immigration
19 policy at the time would have been to allow someone such
20 as Mr. Sze to remain in the United States with his wife.

21 THE COURT: Because he came prior to 1970?

22 MR. STOPEK: Yes and because --

23 THE COURT: That's right.

24 MR. STOPEK: In addition, there were other
25 things that could have been worked for him to be paroled

1 rks

2 back in the United States and both of them eventually
3 obtain residence. It wasn't done. Papers were
4 submitted for him but the Government hadn't acted on them
5 when he returned to the United States to be back with
6 his wife.

7 They are now married -- of course they are
8 married, they are living together. They have a young
9 child the wife is taking care of.

10 Mr. Sze is operating a shoe repair shop and
11 is the support of his wife and the child at this point,
12 your Honor.

13 To deprive the wife and the child of his being
14 with them at this time would be very cruel to both the
15 wife and the child.

16 THE COURT: You see, the difficulty is the Court
17 can't condone bribery of public officials, and when people
18 have been to this country illegally and have left volun-
19 tarily by permission of the Immigration Service, the
20 Court expects them to proceed through regular lawful
21 channels thereafter.

22 While it is true that, unfortunately, the
23 Government has failed to enforce the Immigration laws in
24 anything approaching fairness, the enforcement has been
25 highly selected, and the country is burdened with a

1 jks

2 tremendous of illegal aliens and some get caught and dealt
3 with very harshly, and others go right about their business
4 as if nothing is going on, but I don't see how the Court
5 can condone this type of bribery crime. That's the
6 difficulty it presents.

7 MR. STOPEK: Your Honor, I don't ask it be
8 condoned. I just ask that these things be looked into
9 as mitigating factors.

10 THE COURT: They are both mitigating and aggravat-
11 ing. That is the point I am trying to make with you.

12 Do you have anything you wish to say, Sze, in
13 your own behalf, or do you wish to present any information
14 in mitigation of sentence?

15 THE DEFENDANT: I am sorry I have been involved
16 in a thing which is against my own wish. I know I am
17 wrong, but I love the United States, and also I love my
18 family and my wife and the child. I have nothing to
19 say, actually, but I ask your Honor to be lenient and do
20 whatever your Honor could do to help me, I hope not to
21 separate me from my family and force me to leave the United
22 States.

23 THE COURT: I don't think there is anything the
24 Court can do with respect to your Immigration status.
25 In fact, I believe under these circumstances the

1 jks

2 Immigration regulations will have to be enforced in your
3 case, and I don't regard it as creating an undue hardship
4 upon you because you don't have to go back to Hong Kong.
5 You can go to any British place with your wife and child.
6 I associate myself with the comments of the probation
7 officer in this case, and he says as follows:

8 "While we can sympathize with Sze's aspirations,
9 we cannot condone his actions which were in continuing
10 violation of United States law. In our opinion
11 bribery of an Immigration official is a serious
12 offense, one for which a non-custodial sentence is
13 inappropriate. At the same time, mindful of his
14 lesser role in this conspiracy and the pending
15 deportation proceedings, we do not believe that an
16 extended period of incarceration is necessary."

17 And they continue to say:

18 "We therefore respectfully recommend the
19 imposition of a split sentence with a special
20 condition of probation that he comply with the
21 directives of the Immigration & Naturalization
22 Service."

23 Now, Mr. Kuriansky, what are the Government's
24 comments and recommendations, if any?

25 MR. KURIANSKY: Your Honor, the Government has

1 JKS
2 nothing to add.

3 THE COURT: Where is the Immigration &
4 Naturalization Service?

5 MR. KURIANSKY: Where are they?

6 THE COURT: Yes, where are they? I would
7 ordinarily expect they would be here if they were sincere
8 in their efforts.

9 MR. KURIANSKY: Actually, I do have someone here
10 from Immigration & Naturalization. I didn't know that
11 was your policy.

12 THE COURT: Let him step forward.

13 Would you state your name for the record, sir,
14 and your position?

15 MR. GRINNELL: Lawrence Grinnelli of the
16 Immigration & Naturalization Service.

17 Your Honor, I believe that the defendant is under
18 bond by the United States Immigration Service, which would
19 require his presence at any subsequent proceedings at the
20 District office of the Immigration Service, which is why --

21 THE COURT: If the Court were to follow the
22 recommendation of the probation officer, how soon or how
23 quickly could your organization accomplish its proceedings
24 and effectuate his deportation?

25 I am sure he and his wife would prefer to be

1 jks

2 deported promptly than to languish in jail and then be
3 deported, and that's my inquiry.

4 MR. KURIANSKY: Your Honor, just let me add
5 one thing on that. I don't know that it is at all
6 certain that Mr. Sze will be deported.

7 THE COURT: All right.

8 MR. KURIANSKY: I think his lawyer can speak to
9 that, but there are provisions --

10 THE COURT: The probation officer seemed to think
11 he would be.

12 MR. KURIANSKY: I didn't think that was an
13 automatic step. There are certain applications that he
14 can make.

15 THE COURT: All right.

16 MR. STOPEK: Yes.

17 THE COURT: If it is not automatic, then I will
18 proceed to sentence him, but I think it is ridiculous to
19 sentence somebody and keep him in an American prison when
20 on the day of his release, instead of being restored as
21 a rehabilitated member of the society which paid for his
22 confinement, he is going to be forced to go elsewhere.

23 MR. KURIANSKY: No, I don't think that is the
24 case, your Honor. I am sure his attorney is going to
25 make efforts under the law to secure his presence here.

1 jks

2 and I think he has a good chance of accomplishing that,
3 although it is by no means certain.

4 THE COURT: All right.

5 Yes?

6 MR. STOPEK: On that point, your Honor, there
7 are certain applications available to the applicant and
8 his wife.

9 THE COURT: All right.

10 - Defendant is sentenced to a total term of
11 imprisonment of five years, of which three months shall
12 be served in a jail-type institution, pursuant to Section
13 3651 of Title 18 of the United States Code, and the
14 execution of the balance of the penal sentence is
15 suspended, enforcement thereof is suspended, and the
16 defendant is placed on probation for the balance of his
17 term, and a special condition of probation is that he comply
18 with all lawful and final orders of the Immigration &
19 Naturalization Service.

20 Now, I think that you ought to surrender today.
21 The sooner you do the sooner you will be out, and your bail
22 is not very substantial for a person who has been involved
23 in at least one or two successive illegal entries, really.

24 So I think you ought to go downstairs and
25 surrender to the Marshal, if that can be done.

1 jks

2 All right. Now, you have a motion to dismiss
3 the open counts?

4 MR. STOPEK: Your Honor, I move to dismiss the
5 open counts.

6 THE COURT: How many counts is he mentioned in
7 besides this one?

8 MR. KURIANSKY: Two, your Honor, Counts 3 and 4,
9 I believe.

10 THE COURT: All right, motion granted. Defendant
11 is remanded.

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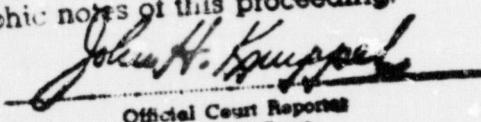
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I (We) hereby certify that the foregoing
a true and accurate transcript, to the best
of my (our) skill and ability from my (our)
stenographic notes of this proceeding.



Official Court Reporter
U. S. District Court

{ A true copy.

A. Daniel Tisaw
Clerk
by Vincent A. Caliari
chief deputy clerk

**AFFIDAVIT IN SUPPORT OF MOTION TO VACATE PLEA OF GUILTY
AND VACATE SENTENCE**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

HUI SING SZE,

Defendant.

**AFFIDAVIT IN SUPPORT OF
MOTION TO VACATE PLEA OF
GUILTY AND VACATE SENTENCE**

74 CR. 1225

STATE OF NEW YORK)

SS.:

COUNTY OF QUEENS)

GERALD AROUGNETI, ESQ., being duly sworn, deposes and
says:

That I am associated with the law firm of STUART WADLER,
attorney for the defendant, and make this affidavit in support
of an application for an order of this Court:

- a) Vacating defendant's plea of guilty herein;
- b) Vacating the sentence imposed upon defendant
by the Court; and
- c) Directing that defendant be rearraigned to
plead to the indictment herein.

The application is based on three grounds:

First, that from the time of his arrest until the im-
position of sentence, defendant, although nominally represented
by counsel, was deprived of the effective aid and assistance of
said counsel because of the language barrier between him and
counsel.

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Second, that defendant's plea of guilty was accepted by the Court on the express representation by his then attorney, a representation elicited by the Court--that defendant had been advised of the length of the possible minimum sentence that might be imposed upon him. The representation was false; defendant had not been so advised.

Third, that the record of the proceedings had herein, particularly defendant's original plea of not guilty and his subsequent plea of guilty as well as the minutes of the plea, are incomplete and defective thereby amounting to a denial of due process to the defendant, in that these minutes do not contain the Chinese translation of the proceedings, the colloquy of Court and counsel for the People and defendant, allocution by the Court and clerk and defendant's responses thereto, etc., which took place when defendant's pleas were taken and sentence was imposed.

The defendant is 30 years of age and is married, and has one child, 21 months of age, who was born in the United States. His native language is Chinese and he has a minimal comprehension of the English language.

The defendant was arrested in 1974, in connection with a Bribery and Conspiracy charge. Subsequently, he was indicted on charges of Bribery and Conspiracy to commit Bribery. He retained an attorney by the name of ALLEN STOPEK to represent him. I am advised that Mr. STOPEK did not or could not write, read or

understand Chinese. At no time did or could Mr. STOPEK and the defendant confer or consult with each other intelligently, or intelligibly with respect to the charges in the indictment, or defendant's position or defense with relation thereto, or with respect to his plea or the sentence which he might receive without the aid of an interpreter. More particularly, Mr. STOPEK and the defendant never conferred or consulted with each other intelligently or intelligibly prior to the proceedings at the time of the plea. At the time of plea, Mr. STEPHEN SINGER was present and represented the defendant. The defendant never met Mr. SINGER prior to this occasion, and had no conversation with him up until the time the plea was taken. Since the defendant could not communicate adequately with his attorney, the representation of the defendant was in name only. Defendant was, in truth and fact, denied the effective aid and assistance of counsel.

Annexed hereto are the minutes of the plea before the HON. CHARLES L. BRIEANT, dated March 21, 1975. On page 3, line 2, the Court asked the following question and received the following answer:

Q Do you read, write, speak or understand any English?

A Not too much.

Present at that time, was the Court appointed interpreter, Miss CHU, who was asked whether or not she had read the indict-

ment and translated it to the defendant. Rather than having the defendant answer, attorney, Mr. SINGER, responded, on page 3, line 8:

THE COURT: Miss Chu, have you read count 1 of the indictment and translated it to him this morning while you were waiting here?

MR. SINGER: Your Honor, this was read to him in the Chinese language in our office by our interpreter.

THE COURT: When was that done?

MR. SINGER: Several days ago.

In point of fact, the defendant had a meeting at the attorney's office, but was not read the indictment, nor did he know the contents of the indictment, nor the exact nature of the charges against him. To further compound the problem, page 4, line 4, the Court posed the following:

THE COURT: Would you translate, please, literally whatever he tells you. Don't say he went. Give me a little translation of whatever words you get insofar as you are able to.

THE INTERPRETER: All right.

It can be seen that the translation at least up until this point, was not a literal translation, but a summation by the interpreter. Subsequent to the Court's admonishing the interpreter to give a literal translation, the interpreter continued with a summation, as evidenced by the fact that on page 8, line 18, the Court asked the following question:

Q Have you been induced to offer to plead guilty by reason of any promises, statements or predictions by anyone to the effect you would get leniency or special treatment or special consideration if you plead guilty instead of going to trial?

The interpreter responded:

THE INTERPRETER: The lawyer explained it to him.

It is obviously a characterization and not a literal translation. It is also very interesting to note, that the Court, itself, on page 15, line 18, made a statement to the effect:

Q I think your English is better than the Chinese you are getting secondhand.

This is a clear reference to the fact that the interpreter was not of the finest quality.

Defendant, in his annexed affidavit, indicates that he speaks Cantonese and has a minimal acquaintance with Mandarin, a Chinese dialect. The interpreter, however, only speaks Mandarin Chinese, and the defendant was unable to fully comprehend what was being said to him.

The Court, in its attempt to ascertain the defendant's guilt, and to determine if there were any promises made to the defendant, asked the following question and received the following answer:

Q Have you been induced to offer to plead guilty by reason of any promises, statements, or predictions by anyone to the effect that you would get leniency or special treatment or consideration if you pleaded guilty instead of going to trial?

A Yes.

It is quite clear that the defendant stated that he was induced to plead guilty by reason of a promise made to him. The Court, in an attempt to clarify this answer, proceeded with a question on page 8, line 6:

Q I asked you a moment ago, had you been induced to offer to plead guilty by reason of any promises. I don't think I heard your answer.

Are you pleading guilty because you believe you are guilty or because of some promise or statement or prediction made to you by somebody?

THE INTERPRETER: He says no.

You can see that the question that the Court propounded was a double question. They asked at the same time if he was pleading guilty because he believed he was guilty or because of some promise or statement. The response was not in any way in answer to the question as it could not be properly answered.

The Court, then a third time, asked the defendant the same question on page 8, line 18:

Q Have you been induced to offer to plead guilty by reason of any promises, statements or predictions by anyone to the effect you would get leniency or special treatment or special consideration if you plead guilty instead of going to trial?

THE INTERPRETER: The lawyer explained it to him.

You can see again that the defendant did not answer the question, but rather, the interpreter came to the conclusion that the lawyer explained it to him. There was a gross breach of

procedure as it did not give the defendant a chance to explain his answer, nor to state what promises were made to him. The Court, on page 10, line 12, et. seq., asked the defendant what specific acts he did in count 1 of the indictment. The defendant indicated he did not agree with any other person to pay money to GRANELLI and KIBBLE at \$4,000.00 per card. Upon further examination, the defendant indicated that he knew an EDDIE CHOW, but that he did not have any business dealings with him. Mr. KURIANSKY, the assistant U.S. attorney, indicated to the Court that overt acts 8 and 9 deal with this defendant, and that if we refer to them, it might be a little clearer to him. The Court then proceeded to ask questions relative to these two specific overt acts. On page 12, line 21, the defendant indicated he was at the bar. The purpose was to buy a "Green Card" for himself. On page 12, line 25, he was specifically asked:

Q. Did you have an agreement with somebody to engage in the purpose of green cards and their resale to somebody else?

and gave the following response:

A. No.

It is clear that the defendant continually maintained that he did not engage in any business arrangements for the purpose of obtaining "Green Cards" for resale to someone else. At this point, Mr. SINGER asked for a brief recess so that he could confer with the defendant.

It is very important to note that a Conspiracy charge

against this defendant would not be proper if he were to pur-
chase a "Green Card" for his own personal use. It is essential
that he be part of a scheme, the purpose of which to resell
the cards to others and the defendant never indicated that he
did partake in any such scheme, nor did he ever have any inten-
tion of procuring the "Green Cards" for another.

The Court, on page 13, line 22, et. seq., asked the
defendant if he knew what a conspiracy was, and asked the inter-
preter to translate for him. The interpreter indicated that
the defendant did not know it was against the law. The Court
then asked if he did in fact have an agreement to obtain cards
for third parties for money. The defendant said he never thought
that way. He wanted to get one for himself. On page 14, line
15 through 18, Mr. SINGER and the Court were both of the opinion
that the defendant had an agreement to buy a "Green Card" for
himself only.

Upon further examination, the defendant responded in
English to some of the questions. It was at this time that the
Court indicated that it thought that the defendant's English
was better than the Chinese translation he was receiving second-
hand. If the Court was convinced that the defendant spoke
better English than the Chinese interpretation, why did it
state on page 16, line 12;

THE COURT: Will you go with him to
the probation office, please, in case
they can't understand him.

THE INTERPRETER: Yes.

It must be obvious that the defendant could not understand English to well, because if he could, the Court would not have asked the interpreter to go with him to the probation department in case he could not understand them.

The defendant was in fact promised by his attorney that he would not go to jail, and more importantly, that any plea would not bar his becoming a citizen of the United States. The defendant was, in fact, incarcerated for a period of three months and is being denied citizenship in the United States, as a result of this conviction. Annexed hereto is a photo copy of a United States Deportation Notice which indicated that the defendant will be deported on June 3, 1976. In light of this action, I respectfully request a stay of deportation granted pending a determination of this issue.

WHEREFORE, your deponent respectfully requests an order to vacate defendant's plea of guilty herein, and vacate the sentence imposed on the defendant by this Court, and directing that the defendant be rearraigned to plea to the indictment herein.

GERALD AROUGHTY

Sworn to before me this
21 day of May, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X"

UNITED STATES OF AMERICA,

-against-

AFFIDAVIT

HUI SING SZE,

74 Cr. 1225

Defendant.

-----X

STATE OF NEW YORK) SS.:
COUNTY OF QUEENS)

HUI SING SZE, being duly sworn, deposes and says:

I am the defendant in the above captioned action, and make this application to vacate my plea of guilty and subsequent sentence, and interpose a plea of not guilty to the indictment herein.

I was indicted on December 31, 1974 and charged with Bribery and Conspiracy in an alleged attempt to obtain "Green Cards" from the Department of Immigration.

I did not want to plead guilty to this charge as I did not commit the acts alleged to have been complained of. My attorney at the time was Mr. Allen Stopek, through his associate, Mr. Steven Singer, informed me that if I pleaded guilty I would not have to go to jail and that I could, at some later time,

become a citizen of the United States. I was unaware of the fact that this conviction would bar me from making an application for citizenship in the United States.

I have no prior criminal record, I am 30 years of age, and I am married and have one child, who was born here and is now 21 months of age.

Any and all arguments I have in this matter will be made by my attorney in the annexed affidavit. The only statements I would like to make are addressed to the facts and not to the law.

I pleaded guilty on March 21, 1975, before the Honorable Judge Brieant. At that time, I was represented by Mr. Stopek, by Mr. Steven Singer. Prior to this, I had never met Mr. Singer, and I did not know who he was. Also present was an interpreter as I do not speak English very well. It is important to know that the interpreter spoke Mandarin, a Chinese dialect, whereas I speak Cantonese, and have a minimal understanding of the Mandarin dialect. On page 3 of the transcript, which is annexed hereto, line 5, the Court asked the interpreter if she read the indictment and translated it for me. Mr. Singer answered that the indictment was read to me in his office by his interpreter several days before. No one ever read the indictment to me. When I was in Mr. Stopek's office, they discussed the case with me, but I do not know if they read the indictment to me, nor do I know if what they were saying was even in the indictment.

During the course of my plea, I responded to certain questions asked of me, but the translation given by the interpreter was not a literal translation. On page 4 of the annexed transcript, the Court indicated:

THE COURT: Would you translate, please, literally whatever he tells you. Don't say he went. Give me a little translation of whatever words you get insofar as you are able to.

most important fact to be considered it to be found on page 4 and 8 in the annexed transcript, lines 21 to line 2, on page 8.

Q Have you been induced to offer to plead guilty be reason of any promises, statements, or predictions by anyone to the effect that you would get leniency or special treatment or consideration if you pleaded guilty instead of going to trial?

A Yes.

I was, in fact, promised that I would not serve any time in jail if I pleaded guilty and that a plea would not bar my becoming a citizen of the United States. In fact, on May 2, 1975, I was sentenced to the custody of the Attorney General for a period of 5 years, in which I was confined in a jail-type institution for a period of 3 months and placed on probation for a period of 4 years and 9 months.

I never, at any time, conspired with anyone to procure "Green Cards" for profit.

WHEREFORE, I respectfully request that this motion be granted in all respects and for such other and further relief, as

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to this Court may seem just and proper.

HUI SING SZE

Sworn to before me this _____
day of _____, 1976.

NOTARY PUBLIC

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

HUI SING SZE,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.

I, Reuben A. Shearer being duly sworn,
 depose and say that deponent is not a party to the action, is over 18 years of age and resides at
 211 West 144th Street, New York, New York 10030
 That on the 17th day of September 1976 at 1 St. Andrews Plaza New York, N.Y. 10007

deponent served the annexed appendix upon

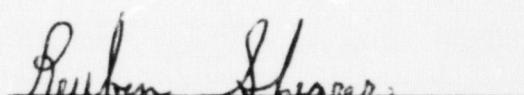
Ira Block, U.S. Attorney

the Plaintiff-Appellee in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 17th
 day of September 1976

Beth A. Kursch

BETH A. KURSH
 NOTARY PUBLIC, State of New York
 No. 41-4623128
 Qualified in Queens County
 Commission Expires March 10, 1978



Reuben Shearer